*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 3892 of 2000

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% 07-02-2005

D. Pandu, S/o Monia, R/o Edukotala Tanda, Nalgonda Road, Miryalaguda, Nalgonda District.

… Petitioner Vs.

$ The General Manager, Central Warehousing Corporation 4/1, Siri Institutional Area, New Delhi and others.

… Respondents.

! **Counsel for the Petitioner: Mr.A.V. Sesha Sai**

^ Counsel for respondents: Mr. G. Ramachandra Rao S.C.

< Gist:

>Head Note

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AIR 1997 SC 3005

[2] AIR 1999 SC 1416

[3] 1999(4) ALD 39(DB)

[4] 2000(6) ALD 661

[5] 2001(4) ALD 535(DB)

[6] 1997(4) ALD 332

[7] AIR 1976 SC 1785

[8] 2001(2) ALT 1 (DB)

[9] 2004(7) ALT 56 (DB)

[10] 2003(2) ALT180(DB)

[11] 2001 LAB.I.C.1579

[12] AIR 1991 SC 471

[13] AIR 1994 SC 1074

[14] AIR 1990 SC 1984

[15] 2006(1) ALD 229 (DB)

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOs. 3892 and 3897 OF 2000

ORDER:

The question involved in both the writ petitions is as to whether acquittal in a criminal case, would preclude disciplinary action being initiated against an employee for the very same charges. Since common questions of law have been raised in both these writ petitions, they were heard together and are now disposed of by a common order. It would be suffice if the facts in W.P.No.3892 of 2000 are taken note of.

The petitioner was initially appointed as a chowkidar with the Central Warehousing Corporation. On the intervening night of 1st/2nd December, 1986 six bags of rice

were stolen from the Central Warehousing Corporation godown. Petitioner was placed under suspension in the month of December, 1986, along with five other chowkidars, and was issued memo dated 8.1.1987 directing him to show cause as to why action should not be taken to remove him from service. A criminal case was also lodged against the petitioner in C.C.No.74/87, before the Judicial First Class Magistrate, Suryapet, under Sections 457 and 381 I.P.C. Petitioner was issued charge sheet in proceedings dated 27.2.1987, enclosing the statement of imputations, and was directed to submit his statement of defence. Petitioner submitted his explanation thereto.

The criminal case instituted against the petitioner ended in his acquittal on 14.9.1987. Petitioner, thereafter, submitted a representation to the 2nd respondent to reinstate him into service in view of his clean acquittal on merits by the criminal court. However the respondents proceeded with the departmental enquiry. Initially, in the month of April, 1987, one Sri Moizuddin, Deputy Manager (General) was appointed as the enquiry officer and subsequently in September, 1987 Sri P.S.Joshi, Deputy Manager (Technical), Vijayawada was appointed as the enquiry officer. The enquiry officer submitted his report on 28.3.1988 holding the petitioner herein and Sri K.Mallaiah (petitioner in W.P.3897/2000) guilty of the charges levelled against them. On receipt of the enquiry report dated 25.3.1988, the disciplinary authority, (3rd respondent), by order dated 26.5.1988, inflicted on the petitioner the punishment of removal from service. The said order of removal was communicated, to the petitioner, vide memo dated 27.5.1988. Against the order of removal dated 26.5.1988 passed by the 3rd respondent, the petitioner preferred an appeal on 30.6.1988 before the appellate authority (2nd respondent herein). The 2nd respondent, by order dated 10.8.1990, rejected the appeal and confirmed the penalty of removal. The order of the appellate authority was communicated, to the petitioner, vide memo dated 18.9.1990. The petitioner herein and Sri K.Mallaiah, (petitioner in W.P.3897/2000), filed W.P.9769/88 before this Court and this Court, by order dated 18.3.1998 while dismissing the writ petition, gave the petitioners liberty to file a review petition under Regulation 69 of the Central Warehousing Corporation (Staff) Regulations, 1986 (hereinafter referred as the 'regulations') before the 1st respondent within one month. Pursuant to the said order, the petitioner filed review petition on 8.4.1998. Since no orders were passed thereon, the petitioner filed W.P.No.244411/99 and as, in the meanwhile, the 1st respondent passed orders on

3.12.1999 rejecting the review petition filed by the petitioner, W.P.No.244411/99 was dismissed as infructuous. The order of the 1st respondent dated 3.12.1999 was communicated to the petitioner by the 4th respondent in Memo dated 16.12.1999. Aggrieved thereby, the present writ petition came to be filed.

Before this court, Sri A.V.Sesha Sai, learned counsel for the petitioners, would contend that since the charge in the criminal case and the departmental proceedings is one and the same, on the petitioners' acquittal on merits by the competent criminal court, departmental proceedings should have been dropped.

In support of this contention, learned counsel would place reliance on **Govt. of Andhra Pradesh v. C.Muralidhar; Capt. M.Paul Anthony v. Bharat Gold Mines Ltd; A.P.S.R.Tc. v. T.Venkatapathi; K.Raghuram Babu v. Railway Protection Force, South Central Railway, Secunderabad; S.K.Ramju v. Regional Manager, APSRTC, Nalgonda.**

Learned counsel would contend that failure to furnish a copy of the enquiry report before imposition of punishment, is not only contrary to Regulation 64 of the Regulations but also in violation of principles of natural justice, resulting in the enquiry proceedings being vitiated. He would place reliance on **Iftekar Ahmed v. Union Bank of India,** in this regard. He would contend that the impugned order passed by the 1st respondent, on the review petition filed by the petitioner, is a non-speaking order and since orders of quasi judicial authorities are required to contain reasons, failure to furnish reasons is in violation of principles of natural justice. Learned counsel would rely on **The Siemens Engineering and Manufacturing Co. of India Ltd. V. The Union of India** in this regard. Learned counsel would also refer to regulation 65 in support of his contention that where two or more employees are involved in similar acts of misconduct, the competent authority should direct that a common enquiry be conducted and since in the present case, no such common enquiry was held, the entire enquiry proceedings were contrary to Regulation 65.

Sri G.Ramachandra Rao, learned standing counsel for the respondents, would submit that while seven witnesses were examined on behalf of the management to establish the charge, the petitioner did not choose to examine any witness in his defence. Learned standing counsel would submit that while the charge in criminal case and in the departmental proceedings were common, the witnesses examined

in the criminal case and the departmental proceedings were not. Learned standing counsel would submit that among the seven witnesses examined in the departmental enquiry, only two witnesses had been earlier examined in the criminal case. While in criminal case fourteen witnesses were examined, P.W.6 and P.W.7, in the criminal case, were alone examined in the departmental enquiry. Learned standing counsel would submit that in addition to these witnesses several other witnesses were examined in the departmental enquiry. He would also refer to the findings of the enquiry officer, in the enquiry report, wherein reasons have been assigned as to why the enquiry officer differed with the findings of the criminal court. Learned standing counsel would contend that there is no prohibition in conducting departmental enquiry merely because the petitioners had been acquitted in the criminal case, even though the charges were common and more so since the witnesses were not all common and the enquiry officer had assigned reasons as to why he differed with the findings of the criminal court. Learned counsel would rely on **V.Srinivas v. Superintendent of Police, Medak District, Nazeer Ahmed v. Govt. of A.P., Home Department, Nagarjuna Grameena Bank, Khammam v. Mandulla Beerappa** and **Sk. Ahmed v. Labour Court.** Learned standing counsel would submit that the petitioner had admitted his guilt, which fact was referred to in the statement of allegations. According to the learned standing counsel, the order of the disciplinary authority also reflects this aspect. Learned standing counsel would contend that Regulation 65 merely confers a discretion and does not mandate that a common enquiry be conducted in all cases. With regards failure to furnish a copy of the enquiry report, before imposition of punishment, learned standing counsel would submit that since the regulations do not require a copy of enquiry report being furnished prior to imposition of punishment and inasmuch as this requirement has been held in **Union of India v. Md.Ramzan Khan** and **Managing Director, ECIL v. B.Karunakar** to be prospective and not to apply to punishments imposed prior to 20.11.1990 and since the punishment of removal, in the present case, was imposed on 26.5.1988, prior to that date, failure to furnish a copy of the enquiry report would not vitiate the departmental proceedings. With regards the contention that the reviewing authority has failed to assign reasons in support his order, learned standing counsel would submit that the said order of the reviewing authority must be understood as an order agreeing with the findings of the enquiry officer, disciplinary authority and the appellate authority and therefore elaborate reasons need not be furnished.

It is not in dispute that the charges in the criminal case and the disciplinary proceedings are the same and that the petitioners herein were acquitted by the competent criminal court in respect of the very same charges, which form the basis for disciplinary action being taken against them. The enquiry officer, in his report dated 28.3.1988, dealt with the order of the criminal court acquitting the petitioners and held as under:

"Let us now examine the Court's judgment (D.7) on which AC relies so much. As per judgment dt.14.9.1987, Hon'ble Judicial First Class Magistrate of Suryapet, has acquitted among others, Shri K.Mallaiah (DO.1) and Shri D.Pandu (DO.2) on a case filed by APPO. The accused DO.1 and DO.2 were acquitted on technical grounds and it appears that APPO has not presented the case properly. Lacunae on the part of Public Prosecution appear to be:

i. Police did not conduct proper panchanama at the scene of offence;

ii. Improper/inadequate deposition by the police investigating officer in the court regarding demonstration of the opening of defective shutter. Hon'ble Judge has clearly observed that this is a very important omission in the evidence of the key witness for prosecution (page 15 of D.7);

iii. Stock register and PV report was not seized and produced before the court to establish the shortage of six bags. Hon'ble Judge has remarked in this regard that investigation by the police was not on the proper lines (Page 23 of D.7);

iv. Further, the concerned godown in charge Shri Ravindra Babu, was not examined by APPO to establish the shortage;

v. Crucial witness Shri Balaram was not examined by APPO (Page 28 of D.7)

vi. Improper investigation by Police and

vii. Stolen property (6 bags of rice) was not produced in the court for examination by the court.

Thus, it is clear that if the case had been properly presented by APPO, he would have won the case and the accused would have been held guilty."

The enquiry officer held that the defective shutters could be lifted to allow a person inside the godown and remove the bags through the shutter and that six bags were removed and brought out through the defective shutter. The enquiry officer held that there was circumstantial evidence to suggest the involvement of both the petitioners herein in the theft of six bags of rice from B/1 compartment of the

Warehousing Corporation on 1.12.1986.

Now to the judgments on this question.

In **Sk.Ahmed**[11], this Court, after a detailed survey of the earlier judgments of the Apex Court, held thus:

"From the decisions referred to herein above, it is clear that an employer can proceed against its employee and initiate departmental enquiry as well as criminal prosecution on the same set of facts. In appropriate case, even the civil proceedings could be initiated. There is no bar in law to initiate all the proceedings simultaneously. In appropriate proceedings, the Court may stay the departmental proceedings, if the Court comes to a conclusion that it may not be 'desirable', 'advisable', or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. It is not a matter of course, but required to be taken having regard to the facts and circumstances in each case. One of the most important considerations that may have to be taken into account before stalling the departmental proceedings is that the defence of the employee in the criminal case may be prejudiced if the departmental enquiry is simultaneously held. This may be done in cases of grave nature involving complicated questions of fact and law. It is well settled that acquittal in a criminal case by the competent court of criminal jurisdiction does not confer any automatic right upon the delinquent employee for his reinstatement into service, even if the prosecution and the departmental enquiry is based on the same set of facts. The distinction between the criminal proceeding and the departmental proceeding is clear. The nature of proof required in a criminal case for establishing the charges and the departmental proceedings for proving the misconduct is not one and the same. It cannot be said that the charges in a criminal case and departmental proceedings would be the same, merely because the same set of facts are involved. The question that falls for consideration in a criminal case as to whether the charged person is guilty of offence punishable under Indian Penal Code or any penal statutes for the time being in force, whereas in a departmental enquiry what is required to establish is as to whether the employee is guilty of misconduct. The misconduct is invariable defined by the rules or regulations, as the case may be by which an employee's conduct is regulated. The misconduct under rules or regulations is entirely different fro that of an offence under Indian Penal Code or any penal statues, as the case may be. On the same set of facts, the disciplinary authority and the criminal Court can come to different conclusions with the regard to the allegations made against the delinquent officer. The conclusions so reached operate in different fields. The consequences that flow from such conclusions are also different. "

In **V.Srinivas**[8], a Division Bench of this Court held thus:

"There cannot thus be any dispute whatsoever that both the criminal charges and the departmental proceedings proceed simultaneously……

…….It is further well settled that even in a case where the criminal trial ends in acquittal in favour of the delinquent employee, there does not exist any embargo on the part of the disciplinary authority in initiating disciplinary proceedings on the self same charges. As noticed hereinbefore, in Paul Anthony's case (1999)3SCC 679), the Supreme Court itself

has categorically held that it is possible that a person can be fund guilty of commission of misconduct despite his acquittal in the criminal trial. The learned counsel for the petitioner, however, would urge that as in the instant case the criminal trial and the departmental proceedings are based on the same set of facts and the evidence adduced before the Criminal Court and the disciplinary authorities being the same without any variance, exception to the aforementioned rule would be attracted. The learned counsel, however, could not produce any material whatsoever in support of the aforementioned contention before this Court. Even the judgment of the criminal case has not been produced. "

In **Nagarjuna Grameena Bank**[10], a Division Bench of this Court held in paragraph 8 thus:

"Although several decisions were cited before us by both the learned counsel relating to the circumstances under which a disciplinary proceeding could be initiated against the delinquent official despite the acquittal of such delinquent by a criminal court on the ground that the charge is not proved beyond reasonable doubt, would not come in the way of a disciplinary authority either initiating disciplinary proceedings after the acquittal or pursuing the disciplinary proceedings already initiated by the date of acquittal……."

In **Nazeer Ahmed**[9], a Division Bench of this Court held thus:

"…….. Only because an order of acquittal has been passed, the same by itself cannot be a ground for quashing the said proceedings. It is now well settled principle of law that criminal proceedings and departmental proceedings stand on different footings. Even in a case where criminal proceedings have been initiated there is no bar in initiating a departmental proceedings. The standard of proof required in both the proceedings is absolutely different. Whereas in a criminal case an accused has to be proved to be guilty of commission of an office beyond all reasonable doubt, in a departmental proceedings preponderance of probability would suffice."

The law laid down, in the aforesaid judgments of this Court, is that mere pendency of criminal proceedings does not preclude the authorities concerned to initiate disciplinary proceedings for the very same charge, since the scope of disciplinary proceedings is different from that of criminal proceedings. While the degree of proof required in criminal proceedings is proof beyond reasonable doubt, in disciplinary proceedings it is that of preponderance of probabilities. While disciplinary proceedings are initiated for misconduct, prescribed either under the certified standing orders or in the rules and regulations governing employees of the establishment, criminal proceedings are for offences under the Indian Penal Code or under other statutes.

It is, however, necessary to refer to the judgments referred to by Sri A.V.Sesha Sai, learned counsel for the petitioners.

In **C.Muralidhar**[1], the employee challenged, the disciplinary proceedings initiated against him, before the A.P. Administrative Tribunal contending that a criminal case was pending on the very same charges. During the pendency of the proceedings before the Tribunal, the petitioner was acquitted in the criminal case. Since the said judgment was not brought to the notice of the Tribunal, the Tribunal disposed of the petition holding that if the criminal proceedings had already been disposed of, no departmental enquiry could be held for the very same charge of possessing assets disproportionate to the known sources of income. The Tribunal, however, was of the view that the other charge in the departmental proceedings, that the respondent had acquired assets without permission of the department, was not part of the charge in the criminal case. The Tribunal observed that the it would be open to the authority to proceed with the departmental proceedings on this charge. The government, however, vide G.O.Ms.No.74 dated 24.2.1995, decided that further action, in the case of allegation of disproportionate assets, be dropped since he was acquitted by the ACB Court and found not guilty of the allegation. The said order of the government made no reference to the judgment of the Tribunal. Subsequently, a fresh charge memo was issued to the employee for acquiring and possessing properties without having obtained permission of the Government (a charge which was not part of the criminal proceedings). The challenge thereto by the employee was allowed by the Tribunal holding that in view of G.O.Ms.No.74 dated 24.4.1995 dropping disciplinary action against the employee, it was not open to the authorities concerned to initiate disciplinary action by issuing charge memo dated 24.4.1996. Aggrieved by the judgment of the Tribunal, the government of Andhra Pradesh carried the matter in appeal to the Supreme Court. The Supreme Court held that G.O.Ms.No.74 dated 24.4.1995 could not be considered as containing a direction that disciplinary proceedings against the respondent in respect of the charge, regarding the allegation of possessing of the properties without permission of the government, was also directed to be dropped and therefore there was no infirmity in the charge memo dated 20.2.1996. In **Muralidhar**[1], neither was it in issue before the Supreme Court nor was it held that a disciplinary enquiry could not be conducted on the very same charge which was subject matter of the criminal proceedings. Since this question was not in issue before the Supreme Court, the judgment in **Muralidhar**[1] has no application to the present case.

I n **T.Venkatapathi**[3], the charge levelled against the employee in the disciplinary proceedings was of his involvement in a criminal case resulting in institution of a criminal case against him and since the criminal case was found to be untenable, the very basis of the charge was knocked out. It is in such circumstances that the Division Bench held that the charges in the departmental proceedings must be quashed, as the criminal case had ended in acquittal. In the present case, the charges leveled against the petitioners are not of their involvement in a criminal case resulting in institution of criminal proceedings against them, but is for theft of six bags of rice. As such, their acquittal in the criminal case neither forms nor does it knock out the basis of the charge in the departmental enquiry. The judgment in **T.Venkatapathi**[3] is of no assistance to the petitioners.

In **S.K.Ramju**[5], a Division Bench of this Court held thus:

"……In the instant case, we are of the opinion that the case of the appellant stands on a better footing, in the sense, the misconduct which is said to have been committed by the appellant goes out of factual matrix, which was also subject-matter of criminal case and not independent. It is not a case where the petitioner was charged with any misconduct unconnected with the said accident. In any event, as it has been held by the criminal Court that the appellant was not guilty of the charge of causing death, and he had not been acquitted on the ground of benefit of doubt, we fail to understand as to how despite the said finding of competent Court of law, the reputation of the respondent-Corporation has been damaged"

This judgment is also of no assistance to the petitioner.

In **Cap.M.Paul Anthony**[2]**,** the Supreme Court held thus:

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the

findings recorded at the ex parte departmental proceedings to stand.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

In **K.Raghuram Babu**[4], this Court relying on **Cap. Paul Anthony**[2], held that, disciplinary proceedings could not be instituted on the very same charges and where same witnesses were examined both in the criminal case and in the departmental enquiry, and that in such a situation, when the employee was acquitted by judicial pronouncement holding him not guilty of the charge, it would be unjust and unfair to allow the findings recorded in the departmental proceedings to stand.

While departmental proceedings can be initiated for the very same charges, on which a criminal case has been instituted, in exceptional circumstances, where the facts and evidence in both the departmental proceedings and the criminal case are the same, without there being an iota of difference, it would be unfair to allow departmental proceedings to be proceeded with or upheld.

While the fact, that the charges in both the departmental enquiry and the criminal proceedings are common, is not in dispute, the question is as whether the evidence adduced in the departmental enquiry was the same as that in criminal case. A perusal of the material on record would disclose that while 14 witnesses were examined in the criminal case and 8 witnesses in the departmental enquiry, only 2 witnesses were common, i.e., 6 out of 8 witnesses examined in the departmental enquiry were not among those who were examined in the criminal case. Since the evidence in the departmental enquiry is not the same as in the criminal case, the exception culled out in **Paul Anthony**[2]**,** to the general principle that departmental proceedings can be instituted on the very same charge which is the basis for the criminal case, would not apply to the facts of the present case. This contention of the learned counsel for the petitioners is, therefore, liable to be rejected.

The next question which arises for consideration is as to whether failure to furnish a copy of the enquiry report before imposition of the punishment would

render the entire order of punishment illegal. In this connection, reference may be made to Regulation 64 which reads as under:

"**Communication of Orders**:- Orders made by the disciplinary authority under regulation 61, 62 or 63 shall be communicated to the employee concerned who shall also be supplied with a copy of the report of enquiry, if any."

All that Regulation 64 requires is that the order of the disciplinary authority must be communicated to the employee with a copy of the enquiry report. Regulation 64 does not require a copy of the enquiry report to be supplied to the delinquent employee prior to imposition of punishment. The contention advanced, by Sri A.V.Sesha Sai, learned counsel for the petitioner, is that the enquiry report was not furnished prior to the order of the disciplinary authority, and not that it was not communicated along with the order of the punishment. Since Regulation 64 merely requires a copy of the enquiry report to be furnished along with the order of the punishment, it cannot be said that Regulation 64 has been violated.

Learned counsel for the petitioners would, however, place reliance on the judgment of this Court in **Iftekar Ahmed**[6] wherein this Court relying on the judgment of the Apex Court in **B.Karunakar**[13], held as follows:

"It is now well settled that after completion of the enquiry, the enquiry report has to be furnished to the delinquent and he should be given an opportunity to explain the incriminating circumstances against him and the mitigating circumstances to take a lenient view in the matter before forming an opinion about the punishment proposed to be inflicted on the delinquent"

It is, however, necessary to note that in **Iftekar Ahmed**[6], the charge sheet was issued on 2.6.1992 and the punishment was imposed on 22.5.1993. In **Md.Ramzankhan**[12], the Supreme Court, by order dated 20.11.1990, while holding that supply of a copy of the enquiry report along with the recommendations, if any, in the matter of proposing the punishment to be inflicted, would be within the rules of natural justice and that the delinquent would therefore be entitled to be supplied with a copy of the enquiry report, held that the said judgment shall have prospective application and no punishment imposed shall be open to challenge on this ground. In **B.Karunakar**[13], the Supreme Court held thus:

"It will, therefore, have to be held that notwithstanding the decision of the Central

Administrative Tribunal in *Premnath K. Sharma case* (1988 (2) ASLJ 449) and of the Gujarat High Court in H.G.Patel's case (1985 (2)26 Guj LR 1385) and of other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the *Mohd. Ramzan Khan case* was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the enquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in *Mohd. Ramzan Khan case* (AIR 1991 SC 471). This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by the High Courts or by this Court in *R.K. Vashisht case* (1993 Supp.(1) SCC 431).

The need to make the law laid down in *Mohd. Ramzan Khan case*[3] prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the enquiry officer to the delinquent employee and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in *Mohd. Ramzan Khan case*[3] without furnishing the report of the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."

It is only where the order of punishment is imposed after 20.11.1990 would failure to furnish a copy of the enquiry report, prior to imposition of punishment, vitiate the order of punishment imposed by the disciplinary authority. In the present case, the order of removal was passed against the petitioner on 26.5.1988 much prior to 20.11.1993 and as such failure to furnish copy of the enquiry report prior to imposition of punishment would neither fall foul of the judgment of the Apex Court in **B.Karunakar[13]** nor would it vitiate the order of punishment imposed on the petitioner.

The contention based on Regulation 65 regarding failure of the disciplinary authority

to conduct common enquiry against all the other employees is also to be rejected. Regulation 65 reads as under:

"**Common Proceedings**:- Where two or more employees are concerned in a case, the authority competent to impose a major penalty on all such employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings and the specified authority may function as the disciplinary authority for the purpose of such common proceedings"

The said regulation merely confers a discretion on the disciplinary authority to make an order directing that the disciplinary proceedings, against all employees concerned in a case, may be taken in a common proceedings. It does not mandate a common enquiry being held in all cases. As such failure to conduct a common enquiry cannot be said to fall foul of Regulation 65.

The other contention relates to failure of the reviewing authority to record reasons. Learned counsel for the petitioner places reliance on **Siemens Engineering and Manufacturing Co. of India Ltd**[7] wherein the Supreme Court held thus:

"…….It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons……..It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law……."

It is not in dispute that the order of the disciplinary authority and that of the appellate authority are reasoned orders. It is well settled that quasi judicial authorities are required to assign reasons for the order passed and failure to assign reasons would be in violation of the principles of natural justice. In this context reference may be made to **S.N.Mukherjee v. Union of India** and a Division Bench

judgment of this Court in **Ambati Srinivasulu v. District Collector**.

In **S.N.Mukherjee**[14], the Supreme Court held as follows:

"The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (*i*) guarantee consideration by the authority; (*ii*) introduce clarity in the decisions ; and (*iii*) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge……."

In **Ambati Srinivasulu**[15], a Division Bench of this Court held thus-:

"One of the facets of the rules of natural justice is that all judicial, quasi-judicial and even

administrative authorities who are entrusted with the task of deciding *lis* between the parties or passing order which affects the rights, interest or status of a person must record reasons in support of their findings and conclusions and such reasons should be communicated to the person concerned. The requirement of recording reasons by judicial, quasi-judicial and even administrative authorities and communication thereof to the affected persons has been highlighted and reiterated in various judgments of the Supreme Court"

Sri G.Ramachandra Rao, learned standing counsel for the respondents, would, however, contend that where the reviewing authority agrees with the conclusions of the enquiry officer, the disciplinary authority and the appellate authority, no separate reasons need be assigned and that the reasons recorded in the order of the disciplinary authority and the appellate authority must be deemed to form part of the order of the reviewing authority. While it is true that in cases where the disciplinary authority agrees with the findings of the enquiry officer or where the appellate authority agrees with the findings of the disciplinary authority and the enquiry officer, elaborate reasons need not be furnished. In the present case, the order of the reviewing authority does not even record his concurrence with the conclusions of either the enquiry officer or the disciplinary authority or even that of the appellate authority. The order of the reviewing authority is bereft of reasons, is not a speaking order and is therefore required to be set aside.

The 1st respondent shall pass a reasoned order, on the review petition filed by the petitioners herein, within a period of two months from the date of receipt of a copy of this order. It is made clear that this court has not interfered either with the order of the disciplinary authority or the appellate authority and it is only the order of the reviewing authority which is being set aside for failure to assign reasons.

The writ petition is accordingly disposed of. No order as to costs.

02-2006

Note: L.R.copy to be marked.

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